

12-79 CHADBOURNE & PARKE LLP V. TROICE

DECISION BELOW: 675 F.3d 503

LOWER COURT CASE NUMBER: 11-11031

QUESTION PRESENTED:

The Securities Litigation Uniform Standards Act ("SLUSA") precludes most state-law class actions involving "a misrepresentation" made "in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). The circuits, however, are divided over the standard for determining whether an alleged misrepresentation is sufficiently related to the purchase or sale of a covered security to satisfy the "in connection with" requirement. The Fifth Circuit in this case adopted the Ninth Circuit standard and held that the complaint here was not precluded by SLUSA, expressly rejecting conflicting Second, Sixth, and Eleventh Circuit standards for construing the "in connection with" requirement, all of which would result in SLUSA preclusion here.

Additionally, and also in conflict with several other circuits, the Fifth Circuit held that SLUSA does not preclude actions alleging aiding and abetting of fraud in connection with SLUSA-covered security transactions when the aiders and abettors themselves did not make any representations concerning a SLUSA-covered security.

The questions presented are:

1. Whether SLUSA precludes a state-law class action alleging a scheme of fraud that involves misrepresentations about transactions in SLUSA-covered securities.
2. Whether SLUSA precludes class actions asserting that defendants aided and abetted SLUSA-covered securities fraud when the defendants themselves did not make misrepresentations about the purchase or sale of SLUSA-covered securities.

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CONSOLIDATED WITH 12-86 AND 12-88 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 1/18/2013